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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/817,459

03/26/2001

Fritz Schwertfeger

HOE96/F319CON

1602

7590

12/12/2003

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EXAMINER

METZMAIER, DANIEL S

ART UNIT

PAPER NUMBER

1712

DATE MAILED: 12/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. 09/817,459	Applicant(s) SCHWERTFEGER ET AL.	
	Examiner Daniel S. Metzmaier	Art Unit 1712	Page 1 of 3

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 01 October 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attached.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 3,62,63,67-69 and 71.

Claim(s) objected to: 2,4,6,7 and 56-59.

Claim(s) rejected: 1,5,8-14,16-33,35-55,60,61,64-66,70,72,74 and 75.

Claim(s) withdrawn from consideration: 15,34 and 73.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

### **DETAILED ADVISORY ACTION**

Claims 1-75 are pending.

#### ***Information Disclosure Statement***

11. The information disclosure statement (IDS) filed September 17, 2003 fails to comply with 37 CFR 1.97(d) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered. The IDS lacks a proper certification and the IDS could have been filed earlier; said IDS has been placed in the file.

#### ***2(a) NOTE – New issues***

12. (1) New claim 82 lacks antecedent basis for "the radicals". (2) Claim 86 sets forth introducing the acid and/or base as the initial charge but claim 76 from which it depends sets forth, "introducing an inorganic hydrogel formed at a pH greater than 3 as initial charge. Both claims define an "initial charge as separate ingredients. It is unclear if the acid and/or base is a further ingredient or outside the scope of claim 76. Please contrast with claim 4 defining an intermediate silica sol formation. (3) claim 96 is broader than claim 76 since it is a surface dried hydrogel rather than "modifying the surface of the hydrogel in step a)" as set forth in claim 76. See also claim 112 relating to similar issue. (4) Claim 116 is indefinite as directed to "an inorganic lyogel" and dependent on claim "120", wherein the last proposed claim is 119. Product claims were indicated to raise a new issue in the last advisory action mailed October 8, 2003. The preceding are a list some of the new issues in the proposed after Final amendment.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (703) 308-0451. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (703) 306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



**Daniel S. Metzmaier  
Primary Examiner  
Art Unit 1712**

DSM